

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CYN Z.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-5406-MAT

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for further administrative proceedings.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff was born on XXXX, 1974,<sup>1</sup> and has a high school education (AR 32.) Plaintiff applied for SSI in March 2015. (AR 34.) Following a remand order from the Appeals Council (AR

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<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 270-75), ALJ Rebecca L. Jones held a hearing on March 26, 2019, taking testimony from Plaintiff  
2 and a vocational expert (VE). (AR 157-93.) On June 10, 2019 the ALJ issued a decision finding  
3 Plaintiff not disabled. (AR 14-42.) Plaintiff timely appealed. The Appeals Council denied  
4 Plaintiff's request for review (AR 1-7), making the ALJ's decision the final decision of the  
5 Commissioner. Plaintiff now seeks judicial review.

### 6 **JURISDICTION**

7 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

### 8 **DISCUSSION**

9 The Commissioner follows a five-step sequential evaluation process for determining  
10 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
11 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not  
12 engaged in substantial gainful activity since March 2, 2012, the amended alleged onset date. (AR  
13 20.) At step two, it must be determined whether a claimant suffers from a severe impairment. The  
14 ALJ found severe Plaintiff's fibromyalgia, interstitial lung disease, somatoform disorder, anxiety  
15 disorder not otherwise specified, and major depressive disorder; and not severe Plaintiff's migraine  
16 headaches and idiopathic hypersomnia/narcolepsy. (AR 20-21.) The ALJ did not make any  
17 findings regarding Plaintiff's clubbed fingers. Step three asks whether a claimant's impairments  
18 meet or equal a listed impairment. The ALJ found that Plaintiff's impairments did not meet or  
19 equal the criteria of a listed impairment. (AR 21.)

20 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
21 residual functional capacity (RFC) and determine at step four whether the claimant has  
22 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
23 performing light work as defined in 20 CFR 416.967(b), subject to additional limitations. (AR 23.)

1 With that assessment, and with the assistance of the VE, the ALJ found Plaintiff able to perform  
2 the following jobs existing in significant numbers in the national economy: marker, production  
3 assembler, and garment folder. (AR 32-33.) The ALJ concluded Plaintiff was not disabled from  
4 March 2, 2014 through the date of the decision. (AR 33.)

5 This Court's review of the ALJ's decision is limited to whether the decision is in  
6 accordance with the law and the findings supported by substantial evidence in the record as a  
7 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
8 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
9 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
10 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
11 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
12 2002).

13 Plaintiff argues the ALJ erred by (1) finding Plaintiff's migraines, hypersomnia, and  
14 clubbed fingers not severe at step two; (2) discounting her testimony; and (3) discounting certain  
15 medical evidence and opinions. The Commissioner argues that the ALJ's decision is supported by  
16 substantial evidence and should be affirmed.

#### 17 Step Two

18 At step two, a claimant must make a threshold showing that her medically determinable  
19 impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*,  
20 482 U.S. 137, 145 (1987); 20 C.F.R. § 404.1520(c). To establish a severe impairment at step two,  
21 the condition "must result from anatomical, physiological, or psychological abnormalities that can  
22 be shown by medically acceptable clinical and laboratory diagnostic techniques. Therefore, a  
23 physical or mental impairment must be established by objective medical evidence from an

1 acceptable medical source.” 20 C.F.R. § 404.1521. Plaintiff carries the burden of proving an  
2 impairment is disabling; a statement of symptoms is insufficient. *Miller v. Heckler*, 770 F.2d 845,  
3 849 (9th Cir. 1985).

4 Plaintiff argues the ALJ erred at step two in finding migraines, hypersomnia, and clubbed  
5 fingers not severe impairments.

6 Regarding migraines and hypersomnia, the ALJ found “there is no objective medical  
7 evidence to show these impairments are more than transient or that they cause significant  
8 vocational limitations.” (AR 20.) As to migraines, the ALJ acknowledged “[t]he medical records  
9 note complaints and treatment for migraine headaches,” but found “imaging of the brain showed  
10 no evidence of etiology or sequelae of migraine headaches.” (*Id.*) Plaintiff argues the ALJ harmfully  
11 erred by requiring imaging results. Dkt. 22 at 12. Plaintiff correctly points to SSR 19-4p, which  
12 states: “While imaging may be useful in ruling out other possible causes of headache symptoms,  
13 it is not required for a primary headache diagnosis.” Further, the ALJ does not have the expertise  
14 to evaluate what clinical findings are necessary to corroborate Plaintiff’s claims, particularly when  
15 the cause of migraines is generally unknown. *See Day v. Weinberger*, 522 F.2d 1154, 1156 (9th  
16 Cir. 1975) (recognizing that an ALJ is “not qualified as a medical expert”); *Johnson v. Saul*, No.  
17 2:18-cv-226-EFC, 2019 WL 4747701, at \*4 (E.D. Cal. Sept. 30, 2019) (noting that “the cause of  
18 migraine headaches is generally unknown”); *Groff v. Comm’r of Soc. Sec.*, No. 7:05-CV-54, 2008  
19 WL 4104689, at \*8 (N.D.N.Y. Sept. 3, 2008) (citing *The Merck Manual* 1376 (17th ed. 1999)).

20 In response, the Commissioner argues Plaintiff “fails to recognize the other evidence the  
21 ALJ considered that showed Plaintiff had declined pain medication and failed to consistently report  
22 severe migraine concerns and limitations to her providers.” Dkt. 27 at 12. However, the ALJ did  
23 not reject the severity of Plaintiff’s migraines on this basis and this defense is thus an impermissible





1 had incentive to overstate her symptoms and complaints.” (*Id.*) This is a legally erroneous ground  
2 on which to discount a doctor’s opinion. *See Lester v. Chater*, 81 F.3d 821, 832 (9th Cir. 1995)  
3 (“The purpose for which medical reports are obtained does not provide a legitimate basis for  
4 rejecting them.”). The ALJ also discounted Dr. Wheeler’s limitations as “not consistent with the  
5 claimant’s ability to engage” in a “robust range of activities.” (AR 30.) Plaintiff’s minimal  
6 activities are not inconsistent with Dr. Wheeler’s limitations.

7 *Dr. Diamonti*

8 Dr. Diamonti opined Plaintiff’s “impairments and symptoms had a marked effect on her  
9 ability to perform activities within a schedule, maintain regular attendance, be punctual within  
10 customary tolerances without special supervision, perform routine tasks without special  
11 supervision, adapt to changes in a routine work setting, set realistic goals, and plan independently.”  
12 (AR 31.) The ALJ gave Dr. Diamonti’s opinion “little weight,” finding it inconsistent with her  
13 own exam findings, “which indicate that the claimant’s thought process, thought content, mental  
14 orientation, mental perception, memory, fund of knowledge, concentration, insight, judgment, and  
15 ability to engage in abstract thought were all within normal limits.” (*Id.*) Substantial evidence does  
16 not support the ALJ’s finding. A showing of no cognitive impairments is not mutually exclusive  
17 with Plaintiff’s somatoform, anxiety, and major depressive disorders, all of which reasonably may  
18 impede Plaintiff from discharging work-related responsibilities. The ALJ accordingly erred in  
19 discounting Dr. Diamonti’s opinion on this ground.

20 The ALJ also appeared to discount Dr. Diamonti’s opinion as inconsistent with that of  
21 reviewing psychologist Brian VanFossen, Ph.D. Because none of the other reasons the ALJ  
22 proffered to discount Dr. Diamonti’s opinion are supported by substantial evidence, this reason is  
23 legally insufficient. *See Lester*, 81 F.3d at 831 (“The opinion of a nonexamining physician cannot

1 by itself constitute substantial evidence that justifies the rejection of the opinion of either an  
2 examining physician *or* a treating physician.”) (citation omitted).

3 **CONCLUSION**

4 For the foregoing reasons, this matter is REVERSED and REMANDED for further  
5 administrative proceedings.

6 DATED this 19th day of March, 2021.

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9 Mary Alice Theiler  
10 United States Magistrate Judge  
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